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Message Text

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INFO OCT-01 NEA-11 ISO-00 SS-15 PC-01 MMO-01 AID-05
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TO AMEMBASSY KABUL PRIORITY

C O N F I D E N T I A L STATE 125909

E.O. 11652: GDS

TAGS: EAID, AF

SUBJECT: STATUS OF FOREIGN ASSISTANCE AND PEACE CORPS PROGRAMS IN AFGHANISTAN

FOLLOWING FYI IS TEXT OF MEMO PREPARED BY THE OFFICE OF THE LEGAL ADVISOR. BEGIN TEXT

DEFINITION OF "COMMUNIST COUNTRY"

SECTION 620(F) PROHIBITS ECONOMIC AND SECURITY ASSISTANCE TO "ANY COMMUNIST COUNTRY." NEITHER THE ACT NOR THE LEGISLATIVE HISTORY OF SECTION 620(F) DEFINES "COMMUNIST COUNTRY" OR SUGGESTS CRITERIA FOR DEFINING IT. SECTION 620(F) PROVIDES IN PART THAT:

FOR PURPOSES OF THIS SUBSECTION, THE PHRASE "COMMUNIST COUNTRY" SHALL INCLUDE SPECIFICALLY, BUT NOT BE LIMITED TO, THE FOLLOWING COUNTRIES:
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PEOPLES REPUBLIC OF ALBANIA
PEOPLES REPUBLIC OF BULGARIA
PEOPLES REPUBLIC OF CHINA
CZECHOSLOVAK SOCIALIST REPUBLIC
GERMAN DEMOCRATIC REPUBLIC (EAST GERMANY)

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HUNGARIAN PEOPLES REPBULIC

NORTH KOREAN PEOPLES REPUBLIC
NORTH VIETNAM

POLISH PEOPLES REPUBLIC
RUMANIAN PEOPLES REPUBLIC
TIBET
FEDERAL PEOPLES REPUBLIC OF YUGOSLAVIA
CUBA
UNION OF SOVIET SOCIALIST REPUBLICS
(INCLUDING ITS CAPTIVE CONSTITUENT REPUBLICS).

SINCE THE ENUMERATED COUNTRIES ARE ILLUSTRATIVE OF WHAT CONGRESS REGARDED AS "COMMUNIST" IN SECTION 620(F), THEY CAN SERVE AS A GUIDE IN JUDGING WHETHER AFGHANISTAN IS A "COMMUNIST COUNTRY." IN VIEW OF THE STATEMENTS OF THE NEW GOVERNMENT ON ITS PROGRAM, INCLUDING ISLAM, NON-ALIGNMENT, RESPECT FOR PRIVATE PROPERTY, AND DEMOCRACY, WE BELIEVE THAT WE ARE NOT PRESENTLY REQUIRED TO REGARD AFGHANISTAN AS "COMMUNIST" WITHIN THE MEANING OF SECTION 620(F). (CONSULTATION WITH CONGRESS ABOUT THIS MATTER, THOUGH NOT REQUIRED BY LAW, WOULD PROBABLY BE DESIRABLE.)

HUMAN RIGHTS CONSIDERATIONS

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SECTIONS 116 AND 502B OF THE FOREIGN ASSISTANCE ACT AND SECTION 113 OF THE FISCAL 1978 FOREIGN ASSISTANCE APPROPRIATIONS ACT ARE POTENTIALLY APPLICABLE, BUT WE CONCLUDE THAT NONE OF THESE SECTIONS CURRENTLY PROHIBITS THE CONTINUATION OF OUR ECONOMIC AND SECURITY ASSISTANCE PROGRAMS IN AFGHANISTAN.

SECTION 116(A) OF THE FOREIGN ASSISTANCE ACT PROHIBITS ECONOMIC ASSISTANCE TO:

THE GOVERNMENT OF ANY COUNTRY WHICH ENGAGES IN A CONSISTENT PATTERN OF GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS, INCLUDING TORTURE, CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT, PROLONGED DETENTION WITHOUT CHARGES, OR OTHER FLAGRANT DENIAL OF THE RIGHT TO LIFE, LIBERTY, AND THE SECURITY OF THE PERSON, UNLESS SUCH ASSISTANCE WILL DIRECTLY BENEFIT THE NEEDY PEOPLE IN SUCH COUNTRY.

SECTION 502B (SECURITY ASSISTANCE PROGRAMS) CONTAINS A SIMILAR STANDARD.

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THE RECENT COUP UNDOUBTEDLY OCCASIONED VIOLATIONS OF HUMAN RIGHTS, AND WE ARE RECEIVING REPORTS OF MASS ARRESTS AND EXECUTIONS. AMBASSADOR ELIOT CHARACTERIZES WHAT IS HAPPENING AS "GROSS VIOLATIONS OF HUMAN RIGHTS" (KABUL 3934) BUT RECOMMENDS AGAINST TAKING ACTION AGAINST THE AID PROGRAM. WE BELIEVE WE SHOULD CONTINUE TO MONITOR THE SITUATION BUT THAT THE NEW REGIME HAS BEEN IN OFFICE TOO BRIEFLY TO PERMIT THE CONCLUSION THAT IT IS ENGAGED IN A "CONSISTENT PATTERN" OF VIOLATING HUMAN RIGHTS.

UNDER SECTION 116(A), AID PROGRAMS MAY CONTINUE DESPITE GROSS VIOLATIONS OF HUMAN RIGHTS IF "SUCH ASSISTANCE WILL DIRECTLY BENEFIT THE NEEDY PEOPLE IN SUCH COUNTRY." UNDER SECTION 502(C)(1)(C), THE SECRETARY IS REQUIRED TO STATE,
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IF REQUESTED TO DO SO BY CONGRESS, WHETHER IN HIS OPINION "EXTRAORDINARY CIRCUMSTANCES EXIST WHICH NECESSITATE A CONTINUATION OF SECURITY ASSISTANCE FOR SUCH COUNTRY," NOTWITHSTANDING HUMAN RIGHTS VIOLATIONS AND WHETHER, ON ALL THE FACTS IT IS IN THE NATIONAL INTEREST OF THE UNITED STATES TO PROVIDE SUCH ASSISTANCE."

SECTION 113 OF THE FISCAL 1978 FOREIGN ASSISTANCE APPROPRIATIONS ACT PROVIDES:

FUNDS APPROPRIATED BY THIS ACT MAY NOT BE OBLIGATED OR EXPENDED TO PROVIDE SECURITY ASSISTANCE TO ANY COUNTRY FOR THE PURPOSE OF AIDING DIRECTLY THE EFFORTS OF THE GOVERNMENT OF SUCH COUNTRY TO REPRESS THE LEGITIMATE RIGHTS OF THE POPULATION OF SUCH COUNTRY CONTRARY TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.

THE U.S. HAS A SMALL INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET) PROGRAM FOR AFGHANISTAN, WHICH FUNDS U.S. TOURS FOR SELECTED AFGHANISTAN MILITARY OFFICERS, PRIMARILY TO EXPOSE THEM TO AMERICAN VALUES AND LIFE STYLE. SOME MANAGEMENT, LOGISTICS, OPERATIONS, AND MAINTENANCE TRAINING IS PROVIDED. THE MAJOR OBJECTIVE OF THIS PROGRAM, AS JUSTIFIED TO CONGRESS, IS TO PROMOTE AFGHANISTAN'S NATIONAL INDEPENDENCE, TERRITORIAL INTEGRITY AND NON-ALIGNMENT, AND REGIONAL STABILITY. WE HAVE NO REASON TO CONCLUDE NOW THAT THE NEW GOVERNMENT INTENDS TO USE ANY UNEXPENDED FUNDS UNDER THIS PROGRAM FOR REPRESSIVE PURPOSES.

PEACE CORPS PROGRAM

THE PEACE CORPS PROGRAM IS EXCLUDED FROM THE FOREIGN ASSISTANCE ACT PROHIBITIONS BY SECTION 638 WHICH PROVIDES:
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NO PROVISION OF THIS ACT SHALL BE CONSTRUED TO PROHIBIT ASSISTANCE TO ANY COUNTRY PURSUANT TO THE PEACE CORPS ACT, AS AMENDED.... 22 USC 2398.

ACCORDINGLY, OUR PEACE CORPS PROGRAM IN AFGHANISTAN WOULD NOT BE PROHIBITED FROM CONTINUING EVEN IF WE CONCLUDE THAT AFGHANISTAN IS A "COMMUNIST COUNTRY," THAT IT IS DOMINATED OR CONTROLLED BY THE INTERNATIONAL COMMUNIST MOVEMENT (620(B)), OR THAT IT VIOLATES STATUTORY HUMAN RIGHTS STANDARDS. END TEXT VANCE

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